United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

ORIGINAL

76-1113

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United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

-against-

LEON VELEZ,

Appellant.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF ON BEHALF OF APPELLANT LEON VELEZ AND ADDENDUM

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BRIEF ON BEHALF OF APPELLANT LEON VELEZ

PRELIMINARY STATEMENT

This is an appeal from a judgment of conviction entered the 1st day of May, 1976, in the United States District Court for the Southern District of New York; Honorable John M. Cannella presiding. As a consequence of appellant Leon Velez's conviction by a jury, he was sentenced to a term of imprisonment of five years, fined $5,000 and a term of special parole for three years for conspiring to import narcotics in violation of Title 21, United States Code, Sections 846 and 963.

QUESTIONS PRESENTED

1. Whether evidence adduced at the trial was sufficient to show knowledge of the existence of a conspiracy to import narcotics?

2. Did an unfair pre-indictment interview which was testified to by an Assistant United States Attorney when other witnesses were available to testify deprive Leon Velez's right to a fair trial?

3. Did the improper comments by the prosecution in his opening statement, coupled with the inflammatory and unfair closing remarks, amount to prosecutorial misconduct, depriving Leon Velez of a fair trial?

4. Whether errors in the Court's charge to the jury require reversal?

5. Was the five-year sentence of the Court impermissible?

STATEMENT OF FACTS

Eight thousand pages of testimony of nearly 100 witnesses; over 500 documents; reference to over 400 unindicted co-conspirators;* over 200 transcribed and translated telephone conversations,** make up the trial record of this prosecution for conspiracy to violate the narcotics laws of the United States. Of the 200 telephone conversations that the jury heard, appellant LEON VELEZ participated in six and was referred to in five others; of the 8,000 pages of testimony, only 450 concerned Leon Velez, 200 of which were the testimony of appellant and his character witnesses (T 7296-7495).***

Included in the trial was a potpourri of government witnesses: some being recalled again and again, testifying five or six times and running the gamut of co-conspirator, informer, New York City Police Officer, Special Agent, translator, all the way up to the lofty reaches of the United States Attorney's Office. Of this plethora of government witnesses, only one witness, Patrolman Rayow, testified to observations of Leon Velez. An

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* A profusion of Hispanic names that could only boggle the minds of the jury. Many of these names were similar to the names of the accuseds (four persons with the surname Velez) were included in the prosecution's list of unindicted co-conspirators.

** Appellant Leon Velez does not concede the legality of the orders permitting the monitoring and taping of his voice and requests permission to join in Point II of co-appellant's joint brief striking the legality of said orders and the admissibility of the tapes and testimony.

*** "T" refers to pages of the trial record.

Assistant United States Attorney, James Nesland, testified to an interview with Leon Velez and Police Officer Concepcion monitoring appellant Sarmiento's telephone identified Leon Velez's voice, because the telephone listed to Leon Velez was answered "Leon" (T 3200-02). This startling evidence -- the first mention of Leon Velez since the government's opening, occurred after approximately seventeen days of trial.

It would, therefore, seem unnecessarily duplicitous and most cruel to subject the Court to a summary of all the evidence presented to the jury. Only a minute portion of the three and a half month trial record encompassing the five years, 1969 through 1974 (the indictment's commencement date is January, 1972) of this mammoth prosecution concerned Leon Velez. Having sifted through this gargantuan record and performed the task of extracting such evidence as the government relied on for conviction, this statement will be limited to that plus the case for the defense -- leaving co-counsel to represent the facts as pertaining to their clients.

GOVERNMENT'S DIRECT CASE

On March 13, 1974, at approximately 9:30 o'clock p. m., Alberto Bravo* telephoned Leon Velez from a telephone listed to Mario Rodriguez.

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* In the transcript of the conversation, the voice referred to as Alberto Bravo is listed as unknown. However, in his direct testimony appellant Leon Velez identified the voice as that of Alberto Bravo (T 7306, 7307).

This conversation, #39,* is set forth below (T3667, 3668).

" . . .

U. No, I came over to my sister-in-law's place and I got high.
Leon: Yes?
U. I am like a . . . like a plane.
Leon: Ah! Very good. Dario called that he had called you and the line was busy, and then, he called again and you had gone out.
U. Yes.
Leon: I told him to call you tomorrow.
U. Yes. Fine. Good.
Leon: What else, brother?
U. Nothing more.
Leon: Everything all right?
U. Sure, yes. Here, waiting for Carrancho. I'll wait for Carrancho to see if he will kill me . . .
Leon: But don't put him (unintell), brother.
U. Carrancho is the one who'll kill me. (unintell)
Leon: How's that? What happened?
U. Ah! I don't know. I'll wait and see.
Leon: Ah?
U. I'll wait for him to see.
Leon: But how could that be, man?
U. Ah! It is better to settle that once for all.
Leon: (unintell) will leave for there.
U. Whatever has to be settled, should be settled at once.
Leon: You alone?
U. Ah! Why not? Alone! I need no one along with me. (spot monitor) I am waiting for him to see what he wants to do me.
Leon: Suppose that (unintell) that man is very crazy.
UKM: No, No, No. But nothing else, only the (unintell)
Leon: (mumbled) with the head . . .
(tape garbled)
UKM: . . . is it all right around there?

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* Only those portions of translated transcripts of telephone conversations are set forth due to limitations of space. Should the Court wish, counsel will provide the remainder.

Leon: Three in the afternoon?
UKM: Yes.
Leon: All right.
UKM: Then I'll call you at three.
Leon: Ah . . . !
UKM: Good (unintell. Both talk simultaneously).
(spot monitor)
Leon: You'll be sleeping, no?
UKM: mmm.
UKM: Maybe it's better that I call at ten, as everyday.
Leon: Good. And if the man . . .
UKM: If not, at two.
Leon: But in any case, you'll call me again, you hear?
UKM: O.K.
Leon: In case I am back.
UKM: O.K. Good. Fine.
Leon: If there is any problem, call me.
UKM: Oh, no, no, no, man. Nothing! Lies that go around. Nothing, no; He wants to talk with me. (unintell) I am going to wait until I can speak with him to see . . . But, no, nothing, bad . . .
(spot monitor)
Leon: Listen then, (unintell) that one is half crazy. (unintell)
UKM: Yes, no, but . . . (They speak simultaneously)
UKM: . . . A hundred per cent, there's nothing.
Leon: Use your head, in any case.
UKM: Well yes, but there's nothing. Don't worry; there's no problem. Nothing. Nothing. . ."
(unintelligible, and conversation ends abruptly)

Two days later, Alberto Bravo called Leon Velez from the same telephone in a conversation, #179, listed below: (T 3662)

"Alberto: Have you finished or not?
Leon: Man! (unintelligible) Some little things for a sister that left for (unintelligible)
Alberto: Yes.
Leon: But I won't go (unintelligible), tomorrow I shall have to get up early.

Alberto: Tomorrow you'll get up really early. When are we going to get together for a farewell meeting?
Leon: For a farewell? We said good-bye a long time ago . . . don't bother me.
Alberto: No, no; tomorrow, tomorrow (unintelligible) At least to have dinner.
Leon: For dinner tomorrow?

. . .

Alberto: Well, here I am at Perro's right now.
Leon: Is he still around here?
Alberto: No. Yes, Perro is here.
Leon: Ah!
Alberto: (unintelligible)
Leon: Ah! (spot monitor) (unintelligible) and everything . . . And everything is all right?
Alberto: Yes. Yes.
Leon: And what have you decided?
Alberto: Ah?
Leon: Are you - is he going over soon?
Alberto: Man, I don't think so.
Leon: No?
Alberto: I don't believe so. I believe that surely he is not . . . "

Almost two months passed with nary a mention of Leon Velez until May 7, 1974 when "Ivan Berrios", in a telephone conversation, #127, with "Francisco Velez",* says: (T 4221)

"

. . .

Mono: Naturally, naturally . . . Look don't you think it would be better: Leon called yesterday already . . .
Bruno: Ye
Bruno: On the other hand, the man - I said to him in Medellin can you do this for me. And he said to me yes, I can do it.
Mono: No, he said yesterday that he would do it. What happened was that - yesterday when the man called me I was in that, in that - in

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* "Francisco Velez" is one of the many names the government alleges was used by appellant Francisco Adriano Armendo-Sarmiento, who also is referred to throughout the record as "Mono", "El Mono", "Pacho" and "El Pacho".

that with that irritation, you hear me? Man it's jut [sic] a very bad (unintelligible) when one loses come cents among friends, man.

(recording br ken here)

Mono: . . . this time we'll use the man.
Bruno: Oh, well, if that guy will receive it from you, O.K.
Mono: Right - don't you think?
Bruno: If he will receive it from you . . . if he receives it from you, okay, because I said to him . . . so that he would continue doing the same for me . . . .
Mono: Yes, yes, yes. He explained to me - he explained to me . . .
Bruno: Yes.
Mono: Dario just called, and I told him to tell his brother to call me. It's just that the man called me yesterday when I was out of sorts with everything.

(recording broken here)

Mono: Wait - I'll write it down in a moment.
Bruno: Okay.

(brief pause)

Mono: Tell me, tell me.
Bruno: PL l . . .
Mono: Cl . . . Cl?
Bruno: PL l . . .
Mono: Cl?
Bruno: No. P as in Pedro.
Mono: Ah, P . . . wait a moment oh fuck, son of a bitch mechanical pencil! PL l . .
Bruno: Zero Four Eight Four
Mono: Zero Four Eight Four. That's it?
Bruno: That's the number.
Mono: PL l - Zero Four Eight Four

(recording broke here)

Mono: . . . (unintelligible phrase)
Bruno: And if not, it's in the telephone directory.
Mono: Good. Oh, good - Perfect. What else is there on your end? . . ."

A half hour later Sarmiento called Leon Velez, (Conversation #130) (T 4221)

" . . .

Mono: Look, man I've just spoken to Bruno.
Leon: Yes.
Mono: When you called me yesterday, I was in a little bit of a twit, man.
Leon: Yes.
Mono: Because a little something happened, but fortunately the . . . the ("Griegonaza") was not total. Otherwise I go to hell.
Leon: Don't kid me, man, eha.
Mono: They nabbed a little thing here - fortunately the big one was not here at the time.
Leon: Eh, what sons of a bitch they are! What happened? Oh, boy (In a low voice as if to himself).
Mono: It's just that things go on by themselves here.
Leon: Uh, huh, now what, brother?
Mono: Look, man, Bruno has just called man - Do you think you could . . . I don't even know how to go to the post office to . . . to mail some things to him . . .
Leon: Yes.
Mono: Huh? He just called from Panama.
Leon: To the post office?
(spot monitor)
Leon: OK, fine . . . but is it twenty dollars, now or what?
Mono: Huh?
Leon: About twenty dollars or twenty-five?
Mono: Of course, and they should . . . they should be divided, no? To his post office box.
Leon: Yes . . . Does he have . . . ?
Mono: Good.
Leon: And where can we talk, Mono?
Mono: Well, I'll be here in the apartment . . . . When could you come (unintelligible phrase) Later, or are you in bed?
Leon: No - the trouble is I have to go to the bank to run a personal errand. You get me?
(spot monitor)
(Recording stops, starts again)
. . . How many dollars is it? About twenty or thirty?

Mono: No, no it . . . In Pesos . . . Pesos . . . just about six . . . Eh, but the other little papers.
Leon: Yes.
Mono: There is about three, seven and a half.
Leon: Uh . . . Eh, man . . . (mumbles unintelligibly then pauses). It's just that (unintelligible phrase) and that can't be done, only little by little.
Mono: Yes, that's why. Little by little. And what we send down there, also little by little, no? . . . It's just that I'm waiting for this fellow to come to throw his suitcases out, because that doesn't . . . No, no, no, no, no, no, no . . . he's a fellow. Bernardo got in here. Of course I can't say he did it, no?
Leon: Yes.
Mono: But . . .
(spot monitor)
(recording stops, starts again)
Leon: He goes (or I go) out.
Mono: Huh?
Leon: Can't you send . . . those papers with somebody who . . .
Mono: Where are you?
Leon: I'm at the apartment on 50th."

The next day, May 8, 1974, Sarmiento called Leon Velez at 5:45 p.m. (T 4609) (Conversation #191)

"
. . .
Mono: Pancho El Mono.
(Greetings)
Leon: Have you talked with that Pansy "El Negro?
Mono: No, man, he said he would call today from Panama but he hasn't called again.
Leon: If he calls again tell him that as soon as gets the things, the papers . . .
Mono: Hmm.
Leon: To let me know . . . to have someone let me know . . .
Mono: Well, today I must call anyway . . . I have placed a call there, but I haven't got it as yet . . .

Leon: Yes.
Mono: What can we do, Leon?
Leon: Ah, but today I cannot . . . maybe tomorrow. . . . "

. . .

Leon: Then, in what did you both agree. In the raw? (en rama?)
Mono: Two . . . what? Eleven . . . Eight raw and two in . . ."

Later in the evening of May 8, 1974, a call from "Ivan" to "Mono" refers to Leon Velez (T 4609) (Conversation #206).

"

. . .

Mono: To Don Leon that he should reply him at the receipt.

. . .

Berrio: Then you delivered to Leon. . .
Mono: Yes. (40) Forty . . . (tape garbled) . . ."

Leon Velez is the subject of a telephone conversation (#211) between "Ivan" and "Mono", May 9, 1974 (T 4609):

"

. . .

Ivan: You gave about 45 to Dr. Leon?
Mono: Yes, and . . .
Ivan: And how many . . . ?
Mono: And a half.
Ivan: Then . . .

. . .

Mono: I . . . awaiting the call of Leon to take him the rest.

. . .

Ivan: Then, you see . . . This man . . . (unintelligible) The money to him?
Mono: Ah?
Ivan: To . . . to Leon?. . ."

At approximately 10 o'clock a.m., Leon Velez telephoned Sarmiento (T 4609) (Conversation #220):

" . . .
Leon: Tell me, ould you be able to bring down that thing for me?
Mono: Yes, of course. Tell me where and in how many minutes . . .
Leon: How long would it take you?
Mono: I'll go down there, that's around the fifties, more or less?
Leon: No, I won't be there . . . I'll see you at 51st Street and Park or Madison Avenue, one of those.
Mono: Wherever you tell me. In about half an hour?
Leon: Half an hour is fine.
Mono: 51st Street and Park Avenue.
Leon: Good.
Mono: I'll see you in half an hour."

At 10:08 a.m., Leon Velez telephoned Sarmiento again (T 4609) (Conversation #222):

"(Conversation starts abruptly, as follows:)
Leon: . . . There by the church?
Mono: Why not? Perfect, 51st Street and 5th Avenue?
Leon: There, at St. Patrick's Church.
Mono: Good, perfect.
Leon: Because I have an appointment at a bank and I don't want to lose time.
Mono: 51st Street . . . Good, I'll leave now.
Leon: Well, I'll wait there for you. I have an appointment first, then I'll go there.
Mono: 51st St. and Fifth Avenue?
Leon: Yes.
Mono: Go ,s.
Leon: So long.
Mono: Yeah."

A few minutes later, Police Officers Monahan, Hernandez and Steven Rayow took up vigil at 50th Street and Fifth Avenue. Leon Velez was standing on the northeast corner with a black leatherette portfolio under

his arm (T 3962, 3963, 4023). Rayow and his camera mingled among the tourists at St. Patrick's Cathedral (T 3986). Sarmiento arrived by taxi five minutes later, carrying a red and green striped cardboard box, similar to those used by Saks Fifth Avenue. After a brief conversation, Sarmiento handed the box to Leon Velez and they walked uptown on Fifth Avenue (T 3964, 3987). Officer Rayow scurried up Fifth Avenue on the opposite side of the street, and when Leon Velez and Sarmiento stopped near 52nd Street, Rayow captured them and two passers-by on film (T 3968, 3988, 3990, 4021).

On 52nd Street and Fifth Avenue, Officer Rayow received money for a taxi from Sergeant Jennings; this was promptly expended when Rayow hailed a taxi on the corner of Fifth Avenue and 52nd Street while Leon Velez and Sarmiento were still walking up Fifth Avenue. Upon arriving at 52nd Street, Leon Velez and Sarmiento turned and walked in the direction of Madison Avenue. Officer Rayow followed in a taxi. When Sarmiento and Leon Velez entered a Shelly's Coffee Shop, Rayow stopped the cab and waited, meter running, on 52nd Street, midway between Fifth and Madison (T 3991). According to one account, they remained in the coffee shop for thirty minutes. However, Rayow's report reduced this period by half -- fifteen minutes. When Leon Velez and Sarmiento left Shelly's and passed by Rayow's taxi, the fifteen-minute wait cost the government $3.00 (T 3965, 3992, 3994, 3995, 4023).

Returning to Fifth Avenue and 52nd Street, Leon Velez and Sarmiento parted. Officer Rayow chose to stay with the money and followed Leon Velez to the First National City Bank at the corner of Fifth Avenue and 51st Street (T 3965, 3994). Leon Velez entered the

bank and went over to a Mrs. Wing, an officer of the bank; they exchanged a few words and he proceeded to the counter portion of the bank (T 3965). Rayow followed close by, stopping at a counter twelve or thirteen feet away (T 4025, 4026). There, according to Officer Rayow, Leon Velez briefly glanced around and took what appeared to be a bank form, began writing on it, and then opened the box. Rayow moved closer, better to see into the box (T 3966). While Leon Velez was counting the money, Rayow claimed to be able to observe stacks upon stacks of currency in $20 and $50 denominations from a distance of 12 feet (T 3967, 4029, 4030). However, when Leon Velez tore up a slip he had been writing on, Officer Rayow was unable to see where the pieces fell. Leon Velez then stopped at Mrs. Wing's desk to use the telephone (T 3967, 4052). The call concluded, he left the bank with the black leatherette portfolio containing the box under his arm and was lost in the crowd (T 3967, 4058).

Except for Assistant United States Attorney James Nesland's testimony that he interviewed Leon Velez, Beatrice Valencia, Omar Hernandez (appellant Edgar Restrapo-Botero) and Marconi Roldan, in addition to Rubin Dario Roldan from whom Mr. Nesland took notes of the substance of an interview as to Rubin Dario Roldan's purchase of money orders -- the government's direct case versus Leon Velez -- 150 pages in less than half a day, concluded (T 6837, 6843, 6846-53, 7173-86).

THE DEFENDANT'S CASE

Thus, the major portion of Leon Velez's case was taken up by his own testimony -- 200 of 450 pages and his two character witnesses, W. James Rose and William J. Murphy (T 7296-7495).

During this testimony, Leon Velez related his early years in Medellin, Colombia, South America, where he befriended the Bravo family which lived next door to his aunt (T 7296, 7297, 7302, 7303). The friendship with Bruno Bravo and to a lesser extent Alberto Bravo persisted long after Leon Velez left Colombia to take up residence in New York (T 7307, 7311). That was in 1954, when Leon Velez retired as a professional soccer player, and travelled to the United States as an employee of the Colombian Consulate in New York (T 7298).

Even in Leon's first year away from Colombia, the Bravos were quick to exploit their friendship with him. Alberto, in need of a job, came to the consulate to solicit Leon's help. This was accomplished with the aid of a friend of Leon (T 7310).

After a change of administrations in Colombia had forced Leon Velez to leave the consulate, Albert and Bruno Bravo continued to seek out Leon for a variety of favors. In 1972, Bruno offered Leon an association in a business venture, importing platinum to the United States (T 7313). Later Bruno requested Leon's assistance in obtaining a doctor for his daughter who had developed an abnormal growth on one leg (T 7314).

Leon Velez secured the services of Dr. Hirsch of the Hospital for Special Surgery. Bruno Bravo remained in New York for the operation, leaving when his wife came to New York to stay with the child for a month's recuperation (T 7315).

The next year saw an exchange of favors between Alberto Bravo and Leon Velez -- Alberto taking Leon Velez to see the Bravo doctor in Medellin when Leon Velez had developed a throat infection on a visit to Colombia (T 7317, 7318). This was reciprocated a month later when Alberto came to New York seeking treatment for an unknown ailment (T 7318). Leon Velez found Dr. Barker. Alberto Bravo's malady was diagnosed, requiring a two-year course of treatment (T 7319). During this period Leon once again extended a helping hand to Alberto Bravo by finding him a place to stay at 340 East 51st Street (T 4074-79, 4083-87, 7319). For these services Leon was paid a fee; part of a personalized service Leon Velez provided for Colombian tourists in need of doctors, shopping aids and sightseeing (T 7300, 7301, 7320). Leon was also reimbursed for accompanying Alberto Bravo to Connecticut and Valdosta, Georgia where Leon acted as interpreter for Alberto and as a master of ceremonies in a showing of Alberto's Colombia-bred horses and in an effort to sell them (T 7320-25).

Called to Colombia in November, 1973 because his mother had suffered a heart attack, Leon Velez met Alberto Bravo and had lunch with him.

Leon returned to New York and almost immediately was called back to Colombia because of the death of his mother. At the wake

and funeral of his mother later in the month, Leon Velez again spoke to Alberto Bravo (T 7323). A few months later, Alberto Bravo was in New York and called Leon Velez from a phone listed to Mario Rodriguez (T 7328, 7329). This conversation, which was played in Court, involved the ravings of an inebriate (Alberto Bravo) "high . . . like a plane" who had recently had a fight with a mutual friend, Carrancho -- considered by both as mad with violent overtones, and Leon humoring his friend. That Alberto, who was singie, spoke of a sister-in-law, Leon took to be the short hand of over indulgence, and the Dario referred to by Leon was not a co-defendant Rubin Dario Roldan, but Leon's own brother Dario who was in New York for an eye operation (T 7329-33).

A subsequent telephone conversation two days later on March 15, 1974 between Leon Velez and Alberto, also played for the jury, was concerned with Leon having some presents (some little things for his sister, his sister's children, his nieces and nephews) delivered to them in Colombia. Leon's reference to Perro -- whose phone Alberto said he was calling from and whom Leon had never met -- was merely to arrange for the delivery of these presents to his sister in Colombia. Although Leon voiced his reluctance to meet Alberto for a farewell dinner, because Alberto drank too much, they did meet a day or two later for either lunch or dinner (T 7334-38).

A month after this conversation, either in March or April, 1974, Leon returned for a visit to his home town, Medellin (T 7345). Naturally he got together with his childhood friends, Alberto and Bruno Bravo. Bruno asked Alberto to do him a favor -- collect some money

for him from a money exchange business the Bravo family was in the process of liquidating (T 7346). Knowing that the Bravo family owned several businesses dealing in financial exchanges -- money, stocks along with an importing and exporting business substantiated by a government witness, Carmen Caban, Leon agreed (T 729, 7307, 7347, 7348). Back in 1957 Leon had purchased stock through the Bravo's stock brokerage business (T 7308).

Bruno gave Leon all the details -- the amount to collect, $20,000 to $30,000 -- from whom; Sarmiento -- whose address and telephone number Bruno supplied; what to do with the money -- deposit $20,000 in New York bank account of the Bravos at the Bank of North America on 46th Street and Fifth Avenue; the number of which Leon was given; either Bruno or Alberto Bravo was to receive the balance of the money when he came to New York (T 7346, 7347).

In New York, Leon Velez received a call from Sarmiento on May 7, 1974. This conversation was played in Court. Sarmiento informed Leon Velez of a robbery that had recently occurred at his apartment. Fortunately, only a small amount of money from the liquidation of the money exchange intended for Leon was taken and the greatest part not touched (T 7352). Sarmiento told Leon Velez that Bruno Bravo, who was in Panama in connection with his import and export business there had called for the money, and Sarmiento was at a loss as to how to send it to him (T 7353). $20 and $25 referred to in the conversation, is Colombian slang similar to our native use of "G's", what was obviously meant -- the $20,000 to $30,000 Leon was to receive

from Sarmiento as funds of the liquidation money exchange business, for which Leon Velez was to get a receipt (T 7354).

However, Sarmiento could not deliver all of the money and told Leon that it was to be delivered in installments along with papers to allow a horse trailer Bruno Bravo had bought for Alberto to be taken from the Colombian port where it had been shipped and held waiting for the proper documents (T 7355-58). Another reference to papers in the conversation meant horse supplies Leon Velez had purchased for Alberto at H. Kauffman & Sons (T 7452). Reference to pesos was more Colombian slang for dollars referring to money from the exchange business; as was 3 1/2 and 7 1/2, meaning $3,500 and $7,500; 3, 4 and 6 meant $3,000, $4,000 or $6,000; "little by little"-- installments until all the exchange money was delivered (T 7357, 7358). Sarmiento's mention of Bernardo was meaningless to Leon (T 7359). However, Leon Velez believed that Sarmiento was having trouble collecting the exchange money and decided to go to Sarmiento's apartment to investigate. He, therefore, took Sarmiento's address and apartment number and hurried over in a taxi. Sarmiento met Leon at the door and gave him packages of money, either $12,000 or $6,000, and an envelope. Sarmiento said the envelope contained checks and asked Leon to mail them to Bruno Bravo's post office box which Leon Velez had been supplied by Bruno in Colombia in April of 1974. Leon voiced his surprise at this deviation; Bruno Bravo had asked him only to collect cash and now he was being given checks (T 7360, 7361). Sarmiento told him, he was

having trouble and couldn't collect cash and would call him when the rest of the money was available (T 7362).

Sarmiento called Leon Velez the next day, May 8, 1974. Conversation #191 was played to the jury. In that conversation, Leon Velez referred to Bruno playfully as a "pansy" and asked Sarmiento to have either Bruno or anyone let him know if the exchange money that he sent was received (T 7363, 7364). "El Zarco" who was short the "13 things", Leon Velez took to mean the person from whom Sarmiento was going to get $13,000 of Bruno's funds from the money exchange business to turn over to him (T 7364). However, Leon Velez was busy that day and told Sarmiento he would call tomorrow to collect $8,000 in cash as per the agreement between Sarmiento and Bruno Bravo (T 7365, 7366).

A meeting was arranged the next day, May 9, 1974. Leon met Sarmiento on 50th Street and Fifth Avenue and accepted a box (T 7366). Sarmiento desired some coffee and they went to Shelley's Coffee Shop on 52nd Street. In the coffee shop the conversation concerned Sarmiento's difficulty in finding a job in the United States without a resident visa. Leon was asked his opinion of the best way to get money to Colombia. He advised against sending cash or money orders by mail lest it be stolen or confiscated by the Colombian authorities. Leon advised that delivery be by hand and someone trustworthy be sent with the money. When asked by Sarmiento, Leon declined an offer of employment as a money transporter (T 7367).

Ten minutes after they had entered the coffee shop, they left.

Parting at 52nd Street and 5th Avenue, Leon went to the First National City Bank branch at 51st Street (T 7369). At the bank he stopped at the desk of a bank official he knew and then went to the public desks in another portion of the bank. The box that he was given by Sarmiento was not well secured. It was merely tied by a rubberband (T 7369). Feeling uneasy, Leon Velez emptied part of the money into his portfolio and left the remainder in the box. Before leaving the bank he stopped again at the same official's desk (T 7369, 7370). After Leon left the First National City Bank he went to Bruno Bravo's bank on 46th Street and Fifth Avenue, the Bank of North America, and deposited $4,000 in Bruno Bravo's account. The remaining $8,000 was given to Alberto Bravo a couple of weeks later when Alberto came to New York (T 7371). And the envelope which Leon Velez had received was mailed to the addressee Bruno Bravo, without being opened (T 7372).

In the latter part of May, 1974, Alberto Bravo requested another favor -- that Leon Velez accompany him to Europe to see the championship soccer matches (T 7339, 7340). A companion with whom Alberto had made arrangements to travel had cancelled at the last minute. Alberto, desiring company, offered to pay for all of Leon's expenses except air fare (T 7341). Leon Velez was finally prevailed upon and accompanied Alberto -- Alberto riding first class while Leon travelled tourist (T 7342). In Europe they saw the championship matches in Germany and travelled to Madrid to see Alberto Bravo's sister Maria Louisa (T 7344). Another sister was in France and could not make the trip to Madrid. Alberto Bravo then flew to Colombia and

Leon Velez to New York via London where he stopped off to see friends (T 7345).

Since that trip, appellant has not heard from or about the Bravos until his arrest in October, 1974. Leon was returning home from Saratoga with his long-term friend and benefactor, William J. Murphy, found the authorities already in his apartment, and was there arrested (T 7374).

Mr. Murphy, a piping contractor in control of and owning his own business, testified as a character witness on Leon Velez's behalf, was partly responsible for Leon's financial well-being. Mr. Murphy, who had befriended Leon in 1958 after his job at the Colombian Consulate had terminated, had employed Leon Velez at his plant for almost a year, and assisted by paying one-half of Leon Velez's rent (T 7299, 7300, 7489-93).

Another character witness, W. James Rose, at the time of his court appearance, was retired. Formerly he had been assistant to the senior vice president and chairman of the American Electric and Power Company where he had been in charge of all of the financing of that company (T 7482-84). He had known Leon for over 20 years and had during that period aided Leon with a gift of $3,000 per annum (T 7485). Additional sustenance is provided by Leon Velez's personal tourist service and an additional $5,000 a year from Leon's exporting dental

supplies to Dr. Viecca and Dr. Latorre in Colombia. In addition, savings from the time Leon was a professional soccer player through his employment at the consulate -- his employment with William Murphy and a business venture exporting women's clothing and accessories from the United States to Colombia, plus a windfall of $12,000 as payment for relocation upon vacating a rent-controlled apartment Leon Velez had leased, has given Leon a financial base which he had expanded through investments in commercial paper, treasury notes and interest on his savings bank accounts into a modest sum (T 7300-02, 7406, 7477).

JAMES NESLAND, ASSISTANT UNITED STATES ATTORNEY - INTERVIEW

After questioning Leon Velez about these finances, and his relationship with Alberto and Bruno Bravo and Sarmiento, the prosecution confronted Leon Velez with the notes of an interview Assistant United States Attorney James Nesland had made late in the day after Leon was arrested and awaiting arraignment by a United States Magistrate (T 7389, 7462, 7463). According to Mr. Nesland and Leon Velez, other persons were present during this interview, including a New York Police Officer, Harvey Kotowitz, and a DEA Agent, William Pumarejo (T 7363, 7764, 7719, 7720). Leon was asked to explain certain notes that Mr. Nesland had written during this interview; whether Leon told Mr. Nesland that Alberto Bravo was in the black market; whether he told Mr. Nesland that he advised Sarmiento to send money orders to Colombia; whether he

told Mr. Nesland that he met Sarmiento in 1974 (not in 1973 as per Leon's testimony); whether Leon told Mr. Nesland that he sent money to the Bravos. Leon Velez challenged the accuracy of these memoranda -- denying that he told Mr. Nesland that he never sent papers or anything from Sarmiento to Bruno Bravo, also denying that he told Mr. Nesland that the only conversation he had with Sarmiento concerned the purchase and sending of money orders to Colombia. Leon Velez insisted the exact opposite occurred; he had told Mr. Nesland that he advised Sarmiento against sending money orders to Colombia (T 7465-72).

This set the stage for the second entrance of Assistant United States Attorney James Nesland on the witness stand; his first was a reading of his notes concerning an interview with Rubin Dario Roldan (T 6837-43, 6846). Mr. Nesland later testified in rebuttal of the defense case. However, as to either interview -- or the other interviews, Beatrice Valencia's Omar Hernandez's, (Edgar Restrepo Bottero) and Marco Roldan's -- Mr. Nesland did not remember any of the questions asked or the answers given or even that he had interviewed these people (T 6848, 6849). Mr. Nesland merely recited from his notes taken during the interview. And where he had written "Bruno" in these notes, Mr. Nesland's testimony supplied the "Bravo" (T 6850).

Mr. Nesland's interpolation and extrapolation of what Leon Velez told him included the following: that Leon knew Alberto and

Bruno Bravo for a period of time; that he saw Alberto Bravo in New York last year at which time he was introduced to "Mono" - "El Mono" or "Pacho" through Alberto Bravo; that Leon Velez knew Alberto Bravo to be in the business of dealing in currency in the black market in Colombia (T 7710, 7713, 7714). Nesland's further interpolation was that in response to a question posed by Mr. Nesland as to a conversation between Leon Velez with "Mono" concerning money orders, Leon admitted advising "Mono" to send Alberto Bravo $12,000 or $13,000 in money orders; that he had never received anything from "Mono" or spoken to him about anything but money orders; as to Bruno and Alberto Bravo, Leon knew Alberto to be a black marketeer of currency in Colombia and Bruno Bravo to be a smuggler, smuggling from the United States to Colombia; that he never sent either of them money orders or had anything to do with "Mono" sending money orders or documents except advising "Mono" with respect to money orders; and that he had attempted once to get a doctor for Alberto Bravo while he was in New York (T 7716, 7717).

POINT I

EVIDENCE ADDUCED AT THE TRIAL WAS INSUFFICIENT TO SHOW KNOWLEDGE OF THE EXISTENCE OF A CONSPIRACY TO IMPORT NARCOTICS.

Expressions claimed by the government in its closing argument to the jury to refer to money (T 7817, 7940, 7941, 8491, 7491, 7492): "things", "papers"; "big one"; "little-by-little"; "in the raw" -- are the foundation upon which the government rests its claim of Leon's conspiratorial knowledge. Other than these phrases which the government claims is a "code for money", the government's evidence that Leon Velez knew of and became part of a world-wide conspiracy to import narcotics into the United States and export the proceeds to Colombia was restricted to proof of a long-standing relationship with Bruno and Alberto Bravo. This evidence showed that Leon acted as an intermediary for the Bravo brothers in collecting monies due them from Francisco Adriano Armedo-Sarmiento. The collection was accomplished by the transfer of monies in a box on the northeast corner of 50th Street and Fifth Avenue, at 10:30 a.m., on May 9, 1974 followed by a trip to the 51st Street branch of the First National City Bank to examine the money; preparing a bank form which mysteriously disappeared after being destroyed.

Mental gymnastics unprecedented in Anglo-American jurisprudence would be required to effect the metamorphosis of such vague

and equivocal evidence into the clear and unequivocal proof needed for submission of the case against Leon Velez to the jury. The evidence the jury heard was proof of nothing more than association. See, United States v. Fantuzzi, 463 F.2d 683, 690 (2nd Cir. 1972). Nowhere in any of the telephone conversations in which Leon Velez was a participant was there even a suggestion that he knew or had reason to believe that he was aiding a world-wide narcotics conspiracy. As far as counsel can find -- the emergence of large scale multi-defendant narcotics conspiracy prosecutions has not altered a simple concept of logic: "those having no knowledge of the conspiracy are not conspirators." United States v. Falcone, 311 U.S. 205, 210 (1940).

> " While one may for instance be guilty of running past a red light of whose existence one is ignorant, one cannot be guilty of conspiring to run past such a light, for one cannot agree to run past the light unless one supposed that there is a light to run past."
> (United States v. Vilhotti, 452 F.2d 1186, 1190 (2nd Cir. 1971)).

Nothing less than evidence that is clear and unequivocal is essential to prove knowledge:

> " This, because charges of conspiracy are not be made out by piling inferences upon inferences . . ."
> (Direct Sales Co. v. United States, 319 U.S. 703, 711 (1942))

It would be inference building to infer conspiratorial knowledge from Leon Velez's slang (alleged coded telephone language) and behavior

at the bank as testified to by Officer Rayow. A jury would have to impute knowledge of a would-be world-wide narcotic conspiracy from the suspicious circumstances surrounding Leon's receipt of the money in the box. Here we have inference upon inference upon inference. The other defendants had different interests and concerns; the inferences drawn amount to this: Leon Velez did favors, ran errands, made himself available to old friends, neighbors, countrymen, hence their activities if they were criminal were Leon's.

It is elementary that circumstantial evidence consists in reasoning from facts which are known or proved, to establish such as are conjectured to exist. But the process is fatally defective and vicious, if the circumstances from which we seek to deduce this conclusion depends itself upon conjecture and speculation.

Before circumstantial evidence is to be received, there is the requirement that it not be too slight, remote or conjectural to have any legitimate influence in determining the fact in issue. Leon Velez was convicted on the inference based on speculation that his association was necessarily bad because his friends or their friends have been engaged in improper or unlawful activities.

Unlike narcotics or other contraband, possession of money even under suspicious circumstances cannot impute a knowledge of a conspiracy unless the circumstances themselves are such to lead to an inescapable conclusion that possessing the money was with knowledge of

the existence of the conspiracy charged in the indictment. Thus, voluminous, prolonged or frequent sales of narcotics might impute knowledge of a conspiracy to distribute narcotics while similarly voluminous sales of sugar does not impute an inference that "the buyer would use goods illegally". Direct Sales Co. v. United States, supra, at 709. Unlike those cases where the Court has found conspiratorial complicity from "slight proof" of participation when such evidence points ineluctably to participation in the conspiracy charged -- here the evidence is too vague, too marginal, too speculative to allow a similar conclusion. See, United States v. D'Amato, 493 F.2d 359 (2nd Cir. 1974); United States v. Manfredi, 488 F.2d 588 (2nd Cir. 1973); United States v. Calabro, 449 F.2d 885 (2nd Cir. 1971).

Two other compelling reasonable conclusions could rationally be drawn -- one that Leon Velez acting out of friendship, agreed to aid his childhood friends, Alberto and Bruno Bravo, by collecting the capital from the liquidation of their money exchange business (innocence) or Leon Velez was aiding the Bravos in their dealings on the Colombian money blackmarket (a smaller and different kind of conspiracy, but not in violation of the laws of the United States). Adopting either conclusion exonerates Leon Velez of the charges in the indictment. If Leon Velez engaged in the different but smaller conspiracy (illegally dealing in currency) with Alberto and Bruno Bravo and Francisco Adriano Armedo-Sarmiento: "this does not mean he should be convicted of a larger one".

United States v. Spock, 416 F.2d 167, 179 (1st Cir. 1969).

That the jury rejected this conclusion of innocence of knowledgeable complicity in any illegal scheme as urged by Leon Velez's testimony begs the question of whether sufficient evidence was before the Court to permit jury deliberation. Without clear and unequivocal evidence of knowledge on the part of Leon that the conspiracy charged existed, submission was erroneous. As has been argued above, knowledge cannot be inferred from the vague, equivocal, and chimerical language of the telephone conversations nor from the circumstances surrounding the transfer of the box containing the money. Similarly, the conversations between the Bravos and Sarmiento and Jorge and Sarmiento discussing the transfer of money to Leon Velez were as equivocal as the conversations participated in by Leon Velez and provide no better basis for inferring knowledge.* United States v. Steinberg, 525 F.2d 1126, 1133, 1134 (2nd Cir. 1975).**

Nothing in Leon Velez's testimonial protestations of innocence aided the government in providing this absent essential ingredient. Neither Leon Velez's testimony nor the exculpatory statements attributed to Leon Velez as testified to by Assistant United States Attorney Nesland provide a basis for an inference of knowledge.

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* In conversation #127, Bruno Bravo acknowledges Leon's agreement to do him this favor.

** United States v. Geaney, 417 F.2d 1116 (2nd Cir. 1969) would restrict use of such conversations until the trial court found by a fair preponderance of the non-hearsay evidence that Leon Velez was a member of the conspiracy. See, United States v. Cirillo, 499 U.S. 872 (2nd Cir. 1974).

> " While false exculpatory statements made to law enforcement officials are circumstantial evidence of consciousness of guilt and have independent probative force, U.S. v. Parness, 503 F.2d 430, 438 (2nd Cir. 1974); U.S. v. Lacey, 459 F.2d 86, 89 (2nd Cir. 1972), this Circuit in U.S. v. Kearse, 444 F.2d 62 (2nd Cir. 1971) and U.S. v. McCooney, 329 F.2d 467, 470 (2nd Cir. 1964) has held that falsehoods told by a defendant in hope of extracting himself from suspicious circumstances are insufficient proof on which to convict where other evidence of guilt is weak and the evidence before the Court is as hospitable to an interpretation consistent with the defendant's innocence as it is to the government's theory of guilt. Accord U.S. v. Lopez-Ortiz, 492 F.2d 109, pet. for reh. en banc denied, 494 F.2d 1296 (5th Cir. 1974); U.S. v. Johnson, 513 F.2d 819 (2nd Cir. 1975). "

Likewise testimony that stretches the imagination non inconsistent with the claim of innocence on either of the propositions advanced -- that Leon Velez aided his friends in their blackmarket currency operation or that he was totally ignorant of any wrongdoings -- and is therefore blameless cannot provide proof of knowledge. This is not a case where "an incredibility inherent" in the testimony leads inevitably to an inference of knowledge. See, United States v. Singleton (2nd Cir. 2/13/76 75-1114, p. 1881). Even rejection of the testimony of Leon Velez fails to cast any light on the nature of his agreement with Alberto and Bruno Bravo or with Francisco Adriani Armedo-Sarmiento. A conclusion of innocence

is certainly as consistent as that of guilt. Leon's favor to a friend in transferring money may have been stupid or naive, but such conduct standing alone does not constitute an act in furtherance of a criminal conspiracy. He was not responsible for the bizarre or other acts of the co-defendants committed without his knowledge. United States v. Borelli, 336 F.2d 376, 385 (2nd Cir. 1964); United States v. Peoni, 100 F.2d 401, 403 (2nd Cir. 1938).

POINT II

AN UNFAIR PRE-INDICTMENT INTERVIEW TESTIFIED TO BY AN ASSISTANT UNITED STATES ATTORNEY WHEN OTHER WITNESSES WERE AVAILABLE PREJUDICED LEON VELEZ'S RIGHT TO A FAIR TRIAL.

Unmindful and disdainful of this Court's ruling in United States v. Torres, 503 F.2d 1120, 1126 (2nd Cir. 1974) "a government prosecutor should not take the stand" unless it is unavoidably necessary -- the prosecution on two occasions called Assistant United States Attorney James Nesland as a witness -- once on the government's direct case to testify to Rubin Dario Roldan's statement as noted on United States Attorney's Form 306 "Statement of Defendant Before Arraignment Made To Assistant U.S. Attorney", concerning purchase of money orders; owning 1 or 2 Don Quixote books; and knowing a Bruno -- and again in rebuttal of Leon Velez's testimony noted on a similar Form 306 (Addendum_ -- concerning the transfer of money or money orders and papers received from Sarmiento to Alberto and Bruno Bravo and a conversation with Sarmiento on the subject of money orders -- when other witnesses, non-lawyers, were present at these interviews. Norma Selzer, an interpreter, was present at the Roldan interview (T 6838). At the interview with Leon Velez, DEA Agent William Pumarejo and Police Officer Harvey Kotowitz were present. Both Agent Pumarejo and Police Officer Kotowitz testified during the course of the trial -- Police

Officer Kotowitz several times. Neither witness was asked any questions concerning the interview with Leon Velez. It was left to a representative of the United States Attorney's Office to rebut Leon Velez. Otherwise the prosecution would not have been able to pit the credibility of a United States Attorney against that of Leon Velez.

This calculated manuever is made clear by the prosecutor's summation in chief. He loses no time in comparing the credibility of Leon Velez with that of the exalted office of the United States Attorney. Mr. Carey takes personal umbrage at having his office attacked by a lay witness, as follows:

> "Again, with Leon Velez how do you develop that he knew he was acting unlawfully? You examine those conversations and see if they make any sense. You recall how he testified, his demeanor, what explanations he gave to you to satisfy the codes, or he tried to explain away the codes, which were used in these conversations.
>
> "Finally, you access the contributions which he made in his statement to Assistant United States Attorney Nesland and the contributions he made on this witness stand when he was questioned by me on cross-examination.
>
> "Here he said he did not discuss money orders with Mono and to Mr. Nesland he said he had never discussed money orders or sending money orders.
>
> "Here he said he received money from Mono and when he was arrested before he said (sic) the opportunity to examine what evidence the government had against him, before he had the opportunity to sit through the same three months trial you saw, to see what the government's proof was, immediately after his arrest he said no, he had never received money

or given money to Mono; yet when he got here he said sure he had received money.

"What's the difference between October 4, 1974 and the day when Leon Velez testified? The difference is on the day he was arrested he didn't know there was a wiretap. He didn't know there was a conversation which clearly contradicted the statements he was giving to U. S. Attorney Nesland (T 7947, 7948)."

. . .

Taking full advantage of the unequal weights, Mr. Carey continues his flagellation of Leon Velez:

"When he was arrested he made certain admissions to an Assistant United States Attorney Mr. Nesland. There are many such admissions, and I invite you to read the transcript and ask for Mr. Nesland's examination, as well as the cross examination of Mr. Velez.

"One of his statements was that he never received money from Mono, yet on the witness stand he told you he did receive money from Mono. Why did he change his story between October 4, 1974 or thereabouts and the present? On October 4, 1974 do you think he didn't remember that on a sunny day outside of Cartiers on 5th Avenue he received a shirt box filled with bundles of money? Do you think that that escaped him? (six) He remembered at that time that he had advised Mono about shipping money orders. He didn't forget that.

"What is the reason, what is the reason his testimony changed? The reason is that on October 4, 1974 he knew where the money came from, and he wasn't going to say anything to get himself caught up in this conspiracy.

"What is the reason he said in this Court on the witness stand that he knew where it was from?

Because he had no choice. He cannot deny something that's so clear from the tapes that you might as well have Alberto and Bruno Bravo tell you themselves.

"So he tailored his testimony. It was slick. I'm not saying it made sense. I don't know if you think it made sense, but his testimony zigged and zagged throughout these conversations to suit some innocent explanation of what it was he was saying.

"These conversations are in the general types of code. He admits it to some extent. He admits that 13 things refer to $13,000 that he was supposed to receive.

"By the way, with respect to how much money he was supposed to receive, if you have a clear idea in your mind of how he explained where this money went, to whom and how much, on the occasion that he received it, I ask you to read the transcript again. His testimony about this money is so confused that I don't think anybody could follow it.

"Well the explanation is that Mr. Nesland asked leading questions. If Mr. Nesland had asked leading questions, do you think he would have had Leon Velez telling him he never received money, or do you think he would have had Leon Velez tell you what he told you on the witness stand here? He did receive money. He wanted him to admit that he knew about the man, about what he thinks constitutes his involvement in this particular crime (sic).

"There is no testimony, by the way, that Mr. Velez was ill, under pressure or never slept at night. Mr. Velez sat in the witness stand and never said a thing about that. The only thing you heard about this came from questions asked by Mr. Kochler, if you recall, and after Mr. Nesland testified Mr. Velez didn't take the stand to say that Mr. Nesland was lying about that.

"... WHAT HE IS ASKING YOU TO BELIEVE IS WHETHER HE OR MR. NESLAND WAS TELLING THE TRUTH." (Emphasis Supplied)

"Well, with any other witnesses, as Mr. Carlton pointed out. What is the motive? (sic) Who has the motive for lying in this case? Is it Mr. Velez who faces a possible prison term, who faces the loss of the opportunities, perhaps, or of going to the golf course, who faces possible deportation, for loss of his alien residence status and who faces, if he is deported for life he led in Colombia before he came to the United States the comfortable life, by the way where he was able to amass by the way $80,000 in savings, earning $5,000 a year . . . . "
(T 8482-86).

An Assistant United States Attorney was by no means an indispensible witness. His notes were merely his interpretations or animadversions of answers to questions, not verbatim statements, his memory of the interviews most remote. Mr. Nesland testified that he was not able to remember the several interviews he conducted or even who was interviewed in the instant case. Ms. Selzer, the interpreter, DEA Agent Pumarejo, or Patrolman Kotowitz could have offered similar testimony without affording the prosecution the opportunity to ask the jury to choose between the United States Attorney and Leon. These available witnesses could have refreshed their memories if necessary by using the same papers referred to by Mr. Nesland. As was testified to on the stand by Mr. Nesland, preparer of these notes, he did not have any special recollection of this particular and the other interviews that would afford the jury

a deeper insight except to raise the specter -- the audacity of an alient defendant in a criminal case contradicting a member of the United States Attorney's staff. Mr. Nesland's assistance in the preparation of this matter for the grand jury, representing the government in arraigning these defendants constitutes sufficient participation forbidding his testimony, "only if an when all other sources of possible testimony have been exhausted". United States v. Torres, supra, at 1126.

The procedure that precipitated and afforded the prosecution the opportunity for Mr. Nesland's ill-conceived testimony -- "the pre-arraignment interview" is not a stranger to this Court:

> " A last round of uncounseled interrogation, (for) a defendant who will shortly appear before a magistrate is equally igomaneous. United States v. Duval, __ F. 2d __ (2nd Cir. 2/27/76) 75-1225, p. 2138.
>
> " A defendant, arrested with considerable force on one day, interrogated and processed for the balance of that day, jailed for the night, returned to his interrogators for the trip to arraignment before a msgistrate, suddenly finds himself closeted with an Assistant United States Attorney who, unbeknownest to the defendant, had drawn up a complaint against him before his arrest and was about to go before a magistrate to begin the prosecution, unarraigned and uncounseled for 20 hours, the defendant is taken through the questions answered the previous day, this time with a warning from the prosecutor that, if the case goes to trial, he can be sentenced to a hundred years in prison. While not every 'pre-arraignment interview' as the government calls it -- a term unknown to the Federal Rules of Criminal Procedure

> or the ALI's model code pre-arraignment procedure -- underlines all the features of this one, the government should be alerted that such an interview should be conducted with strict regard for the rights of the defendant and free from any suggestions or pressure or threats. Prosecutors engaging in such practice at least must be particularly scrupulous to observe the cautions of Miranda that the accused not be threatened, tricked or cajoled into a waiver. '. . . the record here does not permit a finding that this high standard was observed'."
> United States v. Duval, supra, at 2139.

Minus the threats the situation here was similar to that in Duval. Leon Velez was arrested at his apartment after returning from a convention. He was forced to lay on the floor while agents of the Joint Task Force searched his home. A respected friend who had returned with him from the convention was ordered to leave. Leon was taken to the DEA headquarters where he remained overnight (T 7372-76, 7463, 7464) until he was taken before Assistant United States Attorney Nesland. However, the claimed false exculpatory statements noted by Assistant United States Attorney Nesland "occurred during the Assistant United States Attorney's interview alone", having a most prejudicial effect. As this Court stated in United States v. Duval, supra, at 2142:

> " If the false exculpatory statements had occurred during the Assistant United States Attorney's interview alone, the question whether Duval's confession would stand might be of some difficulty."

This impropriety was compounded by Assistant United States Attorney Nesland's testifying when other equally competent witnesses were available; and the prosecutor commenting on the testimony; drawing particular attention to the credibility of Mr. Nesland. It is not surprising that the jury requested Mr. Nesland's notes, believing them to be in evidence (T 8634). See, United States v. Torres, supra.

POINT III

THE IMPROPER COMMENTS BY THE PROSECUTION IN THE OPENING STATEMENT COUPLED WITH THE INFLAMMATORY AND UNFAIR CLOSING REMARKS OF THE PROSECUTION AMOUNTED TO PROSECUTORIAL MISCONDUCT AND DEPRIVED LEON VELEZ OF A FAIR TRIAL.

Mr. Carey's inflammatory rhetoric in his opening and closing remarks to the jury were similar to those found by this Court to have "violated permissible standards of prosecutorial conduct". United States v. Burse, __ F.2d __ (2nd Cir. 3/8/76, 75-1388). Repeated admonitions by the Trial Court* for the prosecutor to desist from making improper comment on an accused's right to remain silent fell upon deaf ears and like the proberbial water upon a duck's back did not deter the prosecutor from commenting on the defense's obligations:

> " I expect that in this particular case defense counsel will question some of the government witnesses by asking them whether or not . . . "
> " . . . The Court: Absolutely don't frame it in that frame of thought . . . . " (T 88)

This commentary of non-production of evidence continued unabated throughout the summation in chief and in rebuttal:

> " There are no documents in this trial which showed that he ever purchased any horse supplied at this time for Bruno Bravo. There are no documents showing that anybody ever purchased any horse supplies" (T 7944)

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* Counsel noted 39 instances of the Court cautioning Mr. Carey: (T54, 55, 56, 59, 64, 69, 70, 83, 88, 89, 90 (twice), 93 (3 times), 7811, 7818, 7931, 7956, 7958, 8450, 8451, 8452, 8466 and 8467, 8480, 8488, 8489, 8495, 8501, 8503, 8505, 8511, 8518, 8519, 8520, 8525, 8535, 8540).

" I have no [sic] addressed the possible defenses that these defense counsel may present. Two defenses are prominent in my mind."

" The Court: There is no obligation on the defendants to do anything, Mr. Carey. They may not even address the jury, although they have a right to do so." (T 7956)

* * *

" Put yourself in Mr. Jacob's position. He is an officer of the Court. He is charged with defending Reuben Dario Roldan. The circumstantial evidence shows he, in fact, is guilty of the charges in this indictment, and they are very substantial charges. Would an officer of the court, charged with the same responsibility as Mr. Jacobs, if you believe that an expert witness could testify and exculpate your defendant, would he not call him?" (T 8450)

* * *

" . . . The Court: It is a valid objection. A defendant does not have to do anything. He does not have to produce any witnesses or do anything at all." (T 8450, 8451)

" In any event, the tapes are available to all defense counsel, and if he was not the speaker in that tape you would have heard." (T 8451)

* * *

" . . . The Court: I cannot speak too much on this subject: the defendants do not have to do a single solitary thing. They could sit here on their hands and the lawyers too during the whole trial. There is no obligation for you to infer, either by direction or indirection, that there is any obligation on any defendant to do anything."

" Mr. Jacobs: Would your Honor direct that Mr. Carey not do that again?"

" The Court: I think I made it very strenuous. If that doesn't get through, I don't know what will. Any reference to anything the defendants could have done is not for you to determine in this case. It has nothing to do with your deliberations."

" Mr. Cutler: If your Honor pleases, what your Honor just said, your Honor does have the power to see that the prosecutor doesn't keep repeating."

" The Court: I don't need any accolades." (T 8452)*

" You heard a witness tell you from the witness stand that there were records of how much jewelry this particular defendant sold. No one brought those records here."

. . .

" . . . The Court: There is no obligation on the defendant to produce anything." (T 8466, 8467)

" Bruno Bravo is supposed to be at this time in the money changing business. He was liquidating that money changing business. If that is so, where is a former employee? Where are the business documents? Where are the records? . . . " (T 8489)

. . .

" . . . The Court: Yes, Mr. Carey. I wish you would not go into areas which suggest that the defendant has to do something." (T 8489)

In this vein the prosecutor at page 7904 alluded to having "uncontroverted proof" and to counsel's arguments in his summation-in-

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* The reluctance of trial judges to use their power to contain prosecutors within the bounds of propriety and their tendency to pass off this task to this Court is a mysterious phenomena to counsel. To a trial jury it can only mean that while the objection was proper and so noted officially by the Court, the Judge privately agreed with the prosecutor.

chief prior to any counsel rendering such argument (T 7955). That counsel was not compelled to make any argument did not seem to bother the prosecution. Neither did the repeated admonitions of the Court deter the prosecution in making argument to the jury in its opening statemen. (T 88, 91). The jury was requested to use its common sense (T 59), to consider certain arguments (T 70, 82) and what proof the government will not submit to the jury (T 53).

In an attempt to poison the jury's minds against the accused from the outset of the trial, and to make it a personal issue between the jury and the defendants, the prosecutor told the jury that following:

> " This is not a trial of drug users, drug addicts, street pushers, this is a trial of members of a group of sophisticated narcotics traffickers whose sole purpose was to flaunt the narcotics laws of the United States in order to satisfy their greed for fast and easy money. " (T 50)
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> . . .
>
> " This trial was brought in the name of the United States of America on behalf of the community in which you live. It is my honor and duty to represent you. " (T 50)
>
> . . .
>
> " This particular prosecution is aimed at the people at the top who direct those who do the touching and distributing and selling. The government wants nothing more for the defendants than a fair trial. The public is also entitled to a fair trial. " (T 91) [Emphasis Supplied]

The prosecution was saying in substance and effect: "I know the defendants are guilty, but we must go through the motions of giving these dastards, these unamerican criminals, these conspirators the form of a fair trial before we hang them."

> " Whether you are evaluating what the accomplice witnesses do, ask yourselves if they themselves are not testifying about the environment in which they live."
>
> " We don't, as I say, condone what the accomplices did in this case, but we do ask you to believe them and when you listen to defense counsel remark on the credibility of government witnesses, consider whether or not they also remark on the evidence which corroborates the government's witnesses, ask yourselves if they dispose of Billy Andries passport and Gaston Robinson's passport and the Fort Knox records* as an example." (T 7957)

To insure that the jury had not lost sight of the fact that it was "us" against the defendants and that he was "their very own prosecutor" he once more became the 13th Juror and seated himself in the jury box with these improper pejorative remarks:

> " All those acts which were committed were directed against the laws of the United States, they were directed specifically against the society which lives in New York City. More specifically, they were directed against you and I."
>
> . . .
>
> " The Court: We will strike the latter part of the statement." (T 7958) [Emphasis Supplied]

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* Referring to a small hotel in Florida with the name of "Fort Knox" is not to the gold depository of the United States located in Kentucky.

Thus, according to Mr. Carey's argument, it was the jury's purpose to assist the government in reaching into the highest echelons of crime:

> " I believe Judge Cannella will confirm . . . I don't know whether he will say it . . . in any event, it was passed by Congress to reach the highest echelons in the criminal world." (T 8517)

According to the prosecutor, it was the jury's duty to aid in disbanding this conspiracy whose resources were so vast as to make "a mockery of what the government was able to seize during the course of this investigation." (T 7837). If the jury had the prosecutor's personal knowledge and "put themselves in my position" (T 8524) "what do you want the government to do? (T 8523)

> " Put yourself in my position. If a Carmen Caban or Billy Andries or Leonel Fernandez or Rita Ramos came to you and said, 'I know who is dealing in millions of dollars worth of cocaine and marijuana. You people don't know, like Julian Carrion Arco, still going on under other names -- how do I know about it? Because I was involved.
>
> " Do you send those people away. Do you say, 'No, no, you are a bad guy; you are a defendant; I can't talk to you; I can't talk to you because you are despicable; you are a fink; you are a bum if you do that; I can't talk to you'?
>
> " Or do you take that person's cooperation and say to yourself, 'I have a responsibility to determine whether or not a crime has been

committed, to get evidence against the people who committed it, and then go out and find the corroboration which convinces me that in fact that person is telling the truth?

" I think your answer would be the same in all cases. I think you would find that that is your obligation.

" They make a big point about all the crimes that the defendant committed. I say we didn't condone their conduct, and the government brought out all of those witnesses. I don't think there was anything new brought out by cross examination. The government is not trying to hide from you the conduct of these particular people. I think you have a right to know about it. And I think it is important to you to assess that conduct."

. . .

" The Court: Personal beliefs should not be indulged in by either side."
(T 8524-25) [Emphasis Supplied]

This confidentiality continued --

" Well, the government has asked you to believe Carmen Caban and Rita Ramos, to believe their testimony."

. . .

" The Court: Just comment on the evidence." (T 8496)

. . .

" . . . Carmen Caban did not name them. How do you think the government found out about them?"

. . .

" The Court: Besides that, there is no evidence of that. That is not based on evidence in this case."
(T 8501, 8502)

. . .

" There is also no evidence that we knew of that particular apartment in time to get the telephone records from the telephone company."

. . .

" The Court: I sustain the objection to that." (T 8503)

. . .

" That will give you an idea of how effective your law enforcement system is against these people and how difficult it is to catch them."

" . . . The Court: Strike that." (T 8505)

. . .

" You have sat through three months of testimony. You have seen how difficult it is for the law enforcement people to gather evidence of a crime that has obviously been committed." (T 8507)

" Billy Andries is supposedly one of the most dangerous men in the world. Billy Andries has been neutralized. That's what cooperation does to an individual. So there is a good side to it also, that he can no longer associate with people who are conducting conspiracies, bringing in marijuana. What would people involved in those crimes stay furtherest from?" (T 8541)

Mr. Carey's personal appeal to the jury begun in his opening remarks which included:

" I would like you to compare it with your own annual salaries." (T 83) --

Continued on into his summation:

" How many of you have the resources to pull that much money together . . . "

> " How many of you earned twice $5,000 and are able to or think you might amass $80,000 in a time span when Leon Velez did it?" (T 8486)

Carried away by his own flamboyance, the prosecutor again misstated the wealth of Leon Velez: "Where was he able to amass, by the way, $80,000 in savings earning $5,000 a year." (T 8486) Leon Velez's testimony -- the basis for this argument -- referred to $35,000 including $12,000 derived from voluntarily relinquishing a rent-controlled apartment. The receipt for this $12,000 was kept from the jury by the prosecutor's objection (T 7477), who later argued to the jury:

> " He told you $12,000 of that money came from his rental agent who paid him to vacate a particular apartment. Well, look at his bank account. It is in evidence. In that year, there is no $12,000 deposit." (T 8486)

The prosecutor forgot that his primary duty as a quasi-Judicial Officer was to see that justice was done; his malicious and false characterization of Leon Velez as a top-flight associate of Albert and Bruno Bravo, as a man who associated with murderers (T 84), a funneler of money (T 817), "at the top" (T 7945), "heavy" (T 8490, 8492), "money man" (T 8491), "one who has caused this City of New York to suffer" (T 7951, 7958) precluded the fundamentals of a fair trial. Lost in this undamned flood of words was the salient fact that Leon's association with the Bravo brothers stemmed from a long-lived friendship, but this did not halt the prosecutor's sole objective -- to win a conviction -- the end justifying the means.

To round out his intemperate argument, he resorted to prosecutorial jingoism, admonishing the jury that "ask yourselves, ask yourselves what kind of man who is innocent, who believes in the American system, jumps bail of a quarter of a million dollars?"* And he demeaned his office by raising the wrath of Watergate (T 8469). Other superfluous arguments dehors the record made by the prosecution concerned the inner workings of the Colombia money black market. This, in order to advance the prosecution's spurious contention that Leon knew of the Bravo's black marketeering in Colombia and, ergo, had guilty knowledge of their narcotics activities here (T 8487, 8488).

In total, the prosecutor's appraisal was designed to inflame the jury and prejudice them against Leon. The government was on a pedestal, while appellant was depicted as a craven human being. The jury was given the prosecutor's personal psychograph of the inner workings of law enforcement so that they might aid in ridding the city of persons like Leon who are ravaging the community. Throughout his presentation the prosecutor deliberately lumped the defendants together in a scatter-box fashion, creating an atmospheric case against Leon, where none in fact existed; and converted this creation into a conviction.

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* This did not refer to any of the defendants in the courtroom, but hopefully the jury would relate it to them, including Leon Velez.

It is difficult if not impossible to be able to recreate in print the atmosphere which surrounded this trial.

The overall conduct of the prosecutor raised many collateral issues which might well have had the effect of distracting the jurors from the issue of the guilt or innocence of Leon Velez.

The doctrine urged by prosecutors that the fundamentals of a fair trial need not be respected if the proof persuades an appellate court of a defendant's guilt has uniformly been rejected. See, e.g., Berger v. United States, 295 U.S. 78; People v. Ashwal, __ N.Y.2d __, decided April 1, 1976 (N.Y.L.J. 4/29/76, p. 1); People v. Cruz, 382 N.Y.S. 2d 89; (N.Y. App. Div., 1st Dept., 4/15/76).

POINT IV

FUNDAMENTAL ERRORS OF THE COURT'S CHARGE TO THE JURY REQUIRE REVERSAL.

An addendum tacked on to the Court's charge concerning an accused's right to remain silent:

> " The burden of proving the defendant's guilt beyond a reasonable doubt rests upon the government, and this burden never shifts throughout the trial. The law does not require a defendant to prove his innocence nor does it require him to adduce any evidence or to take the stand. He may rely upon evidence brought out by the cross-examination of the witnesses for the government" [Emphasis Supplied]

was most misleading. It diluted the absolute nature of an accused's right to remain silent in the face of his accusers by suggesting that there was an obligation to cross-examine witnesses, thereby creating an impression that an accused has a burden to prove innocence through cross-examination. This charge, when taken in conjunction with the prosecutor's arguments on summation demanding that certain defendants produce documents or other proof of innocence, added credence to the prosecution's attempt to shift the burden or proof from the government to the appellant.

Also prejudicial was the Court's erroneous "all or nothing"

charge regarding single or multiple conspiracies. That portion of the charge reads:

> " There has been some contention here by some of the lawyers, and has been argued by the government, about whether this is a single conspiracy or a multiple conspiracy. It is contended here by the defendants that the government has failed to prove the existence of one, of only one conspiracy but has proven several separate conspiracies involving various defendants.
>
> " Proof of several separate and independent conspiracies is not proof of a single, overall conspiracy, and if you find that the government has failed to prove the existence of only one conspiracy, you must find the defendants not guilty.
>
> " In determining whether there was a single, overall conspiracy, you may consider what the evidence shows as to the change of personnel and activities, provided you find that some of the co-conspirators continued throughout the life of the conspiracy and the purposes of the conspiracy continued to be those charged in the indictment.
>
> " The fact that the parties are not always identical does not mean there are separate conspiracies. In other words, if at all times the alleged conspiracy had the same overall primary purpose and the same general class of participants, the conspiracy would be the same basic scheme, even though in the course of its operation additional conspirators joined and performed functions to carry out the scheme while others were not active and had terminated their relationship.
>
> " On the other hand, if you find that one overall conspiracy terminated and that another one was

formed you may not find a single conspiracy, even though the purpose of the conspiracies were the same and some of the defendants were members of both.

" In essence, the question is: what is the nature of the agreement? That is for you to determine after you examine all the facts.

" In this case, before the government can succeed you must find in substance that there was this Colombian group down in Colombia, where the source was, that they had people that would smuggle these controlled substances into the United States through the various ports of entry that have been described: Miami, Texas, Los Angeles, Canada, and that this was intended for the New York market, where it was distributed." (T 8583-85)

Lumping Leon Velez with the other accused:

" . . . was the equivalent of an instruction that the jury could not acquit [Leon Velez] on the conspiracy count without also acquitting the [others]."
United States v. Kelly, 349 F.2d 720, 757 (2nd Cir. 1965)

All of the Court's practical examples of legal concepts are exceptionable ("Robinson Crusoe", "Snow" and "Elephant" descriptions of circumstantial evidence T 8556-59; the "grease in the soup" and "salt in the whiskey sour" illustration for assessing credibility (T 8565, 8566); and the "football huddle" illustration of conspiracy). However, the Court's simile of a co-conspirator who was a cymbal player in a symphony orchestra is the most prejudicial and misleading:

" For example, if, say, there was a three hour performance of a symphony orchestra -- I think there was television commercial that had this particular concept in it -- the orchestra kept playing during the long overture that they were playing, and there was one fellow home dressing ready to go there. He was supposed to be there early, but he hadn't got there. He was rushing to the subway, through the streets, everyplace, and meanwhile the orchestra is playing for an hour or an hour and a half, and he finally gets there, and just as he gets to the steps he picks up a pair of cymbals and strikes them together.

" Now, all he did was strike those two cymbals together, and still and all, he is a member of the symphony orchestra, and he's entitled to whatever praise they are entitled to and whatever criticism they are entitled to, with the rest of them.

" So it doesn't make any difference whether you've got a major or minor part in the conspiracy." (T 8581, 8582)

This simplistic illustration leaves the erroneous impression that the percussionist crashing of the cymbals is the equivalent of the co-conspirator's act of entering into a conspiracy. The percussionist in the example is a contractual member of the orchestra whether he strikes the cymbals or not; while membership in a conspiracy can only be interred from the acts of the accused. Had the orchestra, in Judge Cannella's illustration, decided to blow up the recital hall by a charge of dynamite that would be set off by the cymbals making contact, without the knowledge of the percussionist, while he was dressing and hurrying to the theatre, no one would argue that the percussionist's

innocent act of crashing the cymbals together would make him a member of a conspiracy to dynamite the recital hall. Leon Velez maintains that he is in a position substantially similar to the unwitting percussionist. And any illustration of membership in a conspiracy which removes from the jury consideration of criminal intent or guilty knowledge takes from the jury the right to decide guilt or innocence. See, United States v. Peoni, supra.

Most egregious was the Court's example of "demeanor while testifying":

> " The first thing you do is observe the demeanor of the witness, how he or she answers questions whether they hesitate, whether they fidget. You will remember the famous Kefauver hearings that were on TV. When the camera focused almost entirely for three or four days on the hands of Mr. Costello during the course of the testimony."
> (T 8563)

Any mention of Frank Costello in a criminal conspiracy trial does not aid the accused or balance a concept of justice. Merely to mention the "drug problem" and congress' vain efforts to curb it operates to exacerbate the feelings of a juror in a narcotics case:

> "the drug problem is not a new one in the United States. In 1925 was the first attempt to do something about it. At that time, the Congress passed the Harrison Narcotics Act in an attempt to control the problem.

> Very simply put, what they did that time was put a tax on the use of drugs and require that they be sold from the original container and that a doctor's prescription had to be obtained, and things of that kind.
>
> . . .
>
> " Apparently, that didn't do much good because as time went on, the problem apparently increased, and another law was passed, which attacked it from a different angle, and this was in connection with the importation of these substances into the country, and the Jones-Miller Act was passed, which forbade the importation of drugs into the United States.
> " Not too long ago in point of time, as we recognize the problem continued to increase, and Congress passed the last law, the one which you are applying now."
> (T 8545)

And definitely does not ingratiate an accused with the jury in a drug conspiracy.

A last claim of error in the charge is the omission of a charge in regard to character witnesses' opinion of an accused's reputation. In this case, the Court completely omitted such a charge. Rule 804 of the Federal Rules of Evidence allows a character witness to express his opinion or reputation. Two character witnesses testified on behalf of Leon Velez's good reputation. Leon Velez was entitled to a charge incorporating such witness' personal opinion. None was given. In a close case where evidence of guilt is slight, every consideration must

be given to what might otherwise be considered harmless error. United States v. Burse, supra; United States v. Singleton, __ F. 2d __ (2nd Cir. 2/3/76) (75-1114).

POINT V

UNDER THE CIRCUMSTANCES OF THIS CASE, THE FIVE-YEAR SENTENCE OF THE COURT WAS IMPERMISSIBLE

Leon Velez, a man of 45 years, highly regarded in the community, never having had a brush with law enforcement authorities, who the government concedes was at the very most minimally involved in the conspiracy of which he was convicted, was sentenced to five years' imprisonment, a committed $5,000 fine, and a special parole term of 3 years, despite the Court having before it a probation report replete with errors (S 32, 34, 61, 67-69, 70, 76, 77).* Although the Court stated it would disregard erroneous statements regarding Leon and his role in the conspiracy (S 32, 33) as well as a discrepancy between earned income reported to the Internal Revenue Service and information of earned income given to the probation department, it sentenced this highly respected, useful human being, whose generosity in aiding his childhood friends, the Bravos brothers, collect funds from Sarmiento, resulted in this calamity -- five years' imprisonment.

Judge Cannella did not state the reasons for this "rather harsh sentence". United States v. Driscoll, 496 F. 2d 252 (2nd Cir. 1974). Therefore, any attempt to ascribe a sentence of five years to a man

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* Page references preceded by "S" refers to Sentencing Minutes.

of the caliber of Leon Velez to either reliance on an error-ridden probation report or to a mechanical approach to sentence would be guesswork. A sentence based on a faulty probation report could have been corrected by delaying sentence to obtain a corrected report. This the Court refused (S 61). See United States v. Rosner, 485 F.2d 1213 (2nd Cir. 1973), cert. den. 417 U.S. 950 (1974).

However, a mechanical approach to sentence -- sentencing all drug offenders to a term of imprisonment without regard to involvement as appears to be the situation in this case, cannot be so easily amended. Only resentence by a different judge would remedy that. United States v. Schwartz, 500 F.2d 1350 (2nd Cir. 1974); see also Woolsey v. United States, 478 F.2d 139 (8th Cir. 1973).

POINT VI

LEON VELEZ ADOPTS THE ARGUMENTS ADVANCED BY OTHER APPELLANTS INSOFAR AS THEY ARE APPLICABLE

Leon Velez requests that he be permitted to join the arguments and points raised by other appellants insofar as they may apply to him, most particularly the multiple conspiracy argument raised by other appellants. In this regard the Court ruling in United States v. Miley, 513 F.2d 1191 (2nd Cir. 1975) is apposite. Miley was "a case where a minor participant was forced to sit through weeks [14] of damaging evidence relating to others" (T 1209).

Testimony applicable to guilt or innocence of Leon Velez as noted comprised 450 of 8,000 pages and at least 250 of those were Leon's testimony. World-wide narcotics conspiracies with headquarters in Colombia was unveiled for the jury. Testimony of shipments of hundreds of kilos of narcotics, murders, large narcotics sales, and possession of weapons to protect narcotics came before the jury. Leon Velez collected monies for his boyhood friends Albert and Bruno Bravo from Francisco Armedo Sarmiento and was convicted along with all the rest.

Considering the trial atmosphere, the inflammatory opening and summation of the prosecutor, the Court's charge, and the paucity of evidence against Leon Velez, his conviction was as predictable as it was erroneous.

CONCLUSION

APPELLANT LEON VELEZ'S CONVICTION SHOULD BE REVERSED, THE INDICTMENT DISMISSED, OR IN THE ALTERNATIVE A NEW TRIAL GRANTED.

Respectfully submitted,

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June, 1976.

GILBERT S. ROSENTHAL,
ABRAHAM WILSON,
Of Counsel on the Brief.

understands English very well

Form No. USA 33s-306 p. 1
Rev. 10/28/7[illegible]

STATEMENT OF DEFENDANT BEFORE ARRAIGNMENT
MADE TO ASSISTANT UNITED STATES ATTORNEY

Date: October 7, 1974

Time Interview Commenced: _____ a.m. 3.50 p.m.

Q. My name is JEN, I am an Assistant United States Attorney. You have been arrested for a violation of 21 USC ## 812, conspiracy to import which relates to _____
In a few minutes you will be taken before the United States Magistrate who will fix bail in your case. Do you understand that?

A. Yes Sir

Q. You have a constitutional right to refuse to answer any of my questions. Do you understand that?

A. Yes Sir

Q. You have an absolute right to remain silent, and if you choose to answer any questions, any statement you do make can be used against you in a court of law. Do you understand that?

A. Yes I do

Q. You have a right to consult an attorney and to have that attorney present during this interview. Do you understand that?

A. Yes Sir

Q. If you do not have funds to retain an attorney an attorney will be appointed to represent you and you do not have to answer any questions before this attorney is appointed and you can consult with him. Do you understand that?

A. Yes

Q. Understanding your rights as I have explained them, do you want to give me some information at this time about your background and your version of the facts?

A. Yes

Form No. USA 33s-305 p.2
Rev. 6-28-66

Name: LEON VELEZ Marital Status: Single Age: 44 June 1, 1930

Aliases: ———

Children: NONE Other Dependents: None in U.S.

Address: 350 East 50th Street New York 10022 Apt. No. 3A Rent: $207.19 Period: 5 years

With Whom Residing: ALONE

Citizen of: Columbia. Medellin, Columbia Registered as an Alien: Resident Alien

Entry to U.S. 20 years ago Registered with Selective Service Military Service, Discharge:

Employed: Self-employed tourist guide / Broker Wages: $5000 per year

Savings Acct $44-4500
Investments $35,000
*Convicted before Magistrate with 20,000 in Acct.

Previous Record:

NONE

Addict:

NONE

Defendant's Statement:

I know Alberto BRAVO from Medellin Colombia. I saw him many times in the U.S. He buys and sells money illegally in the black market. He once brought 2 horses. He came for other reasons.

I know Pacho, El Moro through Alberto BRAVO. Moro wanted to send money to Alberto BRAVO's brother, about 13 or 12000. Told him to use money orders. I met Moro this year.

Alberto's Bros. is BRUNO BRAVO. BRUNO does business in Panama, smuggling operation of some sort of goods and cash to Columbia.

No. U.S.A. 33s-306 p.3
6-28-66

Defendant's Statement continued:

NEVER had conversations with MONO except as to money orders.

NEVER talked to Bruno or Alberto except about getting a Dr.

Alberto Bravo was in Columbia. Bruno imported Mdse into Columbia but not from Columbia to the U.S., except platinum.

NEVER sent MONEY, or anything, to Bruno Bravo for MONO

Time Interview Terminated:________a.m. 4:15 p.m.

Witnessed: Assistant U.S. Attorney James E. [illegible]

Agents: William [illegible]

P.O. Henry [illegible]

Bail recommended: $35,000

Possible bail suggested by defendant: lower

Bail set by Magistrate: $25,000

Time of arraignment:________a.m. 5:00 p.m.

Hearing:

NEVER sent papers of any kind to Bruno. NEVER for Mono.

NEVER provided money to
Mom or owed him anything,
or VICE VERSA.

ROSENTHAL & HERMAN USA v. Velez

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 8 day of June , 19 76 at No. 1 St. Andrews Pl., NYC deponent served the within Brief upon U.S. Atty., So. Dist. of N.Y. 3 herein, by delivering a true the Appellee copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 8 day of June 19 76

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1977